

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MASONRY INSTITUTE, BRICKLAYERS)	
LOCAL 21 PENSION FUND, DISTRICT)	
COUNCIL TRAINING CENTER FUND,)	
AND BRICKLAYERS AND STONE)	Case No. 08 C 957
MASONS OF ILLINOIS DISTRICT COUN-)	
CIL NO. 1 S.A.C. ANNUITY TRUST FUND,)	Honorable Judge Darrah
)	
Plaintiffs,)	Magistrate Judge Keys
)	
v.)	
)	
ORLOWSKI CONSTRUCTION, INC.,)	
an Illinois Corporation,)	
)	
Defendant.)	

DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT

Defendant, ORLOWSKI CONSTRUCTION, INC., an Illinois Corporation, by its attorneys, Allocco, Miller & Cahill, P.C., answers Plaintiffs' complaint as follows:

1. This action is brought under the provisions of Sections 502(g)(2), (a)(3), and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(g) (2), (a) (3), and 1145.

ANSWER: Defendant admits the allegations in Paragraph 1.

2. Jurisdiction in this Court is based upon Sections 502(e)(1) and 502(e)(2) of ERISA, 29 U.S.C. §§ 1132(e)(1) and (e)(2). Section 502(e)(2) states in relevant part:

Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

ANSWER: Defendant admits the allegations in Paragraph 2.

3. The MASONRY INSTITUTE, BRICKLAYERS LOCAL 21 PENSION FUND, DISTRICT COUNCIL TRAINING CENTER FUND, AND BRICKLAYERS & STONE MASONS OF ILLINOIS DISTRICT COUNCIL NO. 1 B.A.C. ANNUITY TRUST FUND, ("Funds") receive contributions from numerous employers pursuant to collective bargaining agreements heretofore entered into between District Council No. 1 of the International Union of Bricklayers and Allied Craftsmen ("Union") and Defendant, and the Funds are maintained and administered in accordance with and pursuant to the provisions of Section 302(c)(5) of the National Labor Relations Act, as amended, ERISA and other applicable federal law and the Funds are administered pursuant to the terms and provisions of a certain Restated Agreement and Declaration of Trust ("Trust Agreement").

ANSWER: Defendant admits the allegations in Paragraph 3.

4. The Fund office is located at 2340 South River Road, Suite 303, Des Plaines, Illinois 60018-3224, and the Funds are administered in the Northern District of Illinois.

ANSWER: Defendant admits the allegations in Paragraph 4.

5. As provided in the Trust Agreement, Plaintiffs are required to receive, hold and manage all monies required to be contributed to the Funds in accordance with the provisions of the then applicable Collective Bargaining Agreement for the uses and purposes set forth in the Trust Agreement.

ANSWER: Defendant admits the allegations in Paragraph 5.

6. Defendant is an employer engaged in an industry affecting commerce and maintains its principal place of business at 2155 West Iowa Street, Chicago, IL 60622.

ANSWER: Defendant admits the allegations in Paragraph 6.

7. Defendant employs or has employed persons represented for collective bargaining purposes by the Union and agreed to be bound by the Collective Bargaining Agreement or agreements referred to herein, by the terms of which Defendant was required to contribute to the Funds.

ANSWER: Defendant admits the allegations in Paragraph 7.

8. That from January 1, 2006, through December 31, 2007, Defendant has employed, and will continue in the future to employ, diverse number of individuals which are unknown to Plaintiffs but are known to Defendant on whose behalf Defendant has failed to report and remit contributions.

ANSWER: Defendant admits that from January 1, 2006 through December 31, 2007, Defendant has employed individuals. Defendant denies remaining allegations in Paragraph 8.

9. Plaintiffs are entitled to an accounting from Defendant, said accounting to state the number of individuals regularly employed by Defendant, including those regularly employed on a part-time basis, and the length of time all said individuals were employed by Defendant for the period January 1, 2006, through December 31, 2007.

ANSWER: Defendant admits the allegations in Paragraph 9.

10. Plaintiffs, in their behalf, and on behalf of all employees for whose benefit the Funds were established, have requested Defendant to submit its books and records for an audit as provided for in the Funds' Trust Agreement, which is incorporated into the Bargaining Agreement, but Defendant has refused and failed to perform as herein alleged.

ANSWER: Defendant denies the allegations in Paragraph 10.

11. Plaintiffs are without an adequate remedy at law and will suffer immediate, continuing and irreconcilable injury and damage unless Defendant is ordered to specifically

perform all of his obligations required under the Collective Bargaining Agreement and the Trust Agreement, and is restrained from continuing to refuse to perform as thereunder required.

ANSWER: Defendant denies the allegations in Paragraph 11.

12. That Defendant is delinquent to the Funds for the period January 1, 2007, through December 31, 2007, in the estimated amount of \$75,000.00.

ANSWER: Defendant denies the allegations in Paragraph 12.

ORLOWSKI CONSTRUCTION, INC.

/s/ Kathleen M. Cahill
One of Defendant's attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the attached, Answer to Plaintiffs' Amended Complaint, with the Clerk of the Court using the CM/ECF system on or before the hour of 5:00 p.m. this 3rd day of June, 2008, which will send notice of such filings to the following:

Robert B. Greenberg
Asher, Gittler, Greenfield & D'Alba, Ltd.
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/s/ Kathleen M. Cahill
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